

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Lyondell Delisting Petition  
(LAC 33:V.4999) (HW099P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.4999.Appendix E (Log #HW099P).

Lyondell Chemical Company is petitioning to exclude from the hazardous waste regulations (delist) the company's incinerator direct contact cooling wastewater and fire suppression automatic sprinkler ("deluge") system wastewater. The incinerator design uses direct contact cooling water to quench and scrub hot combustion gases resulting from the destruction of the listed hazardous waste. This primary cooling wastewater is blown down and pH-adjusted before being discharged at an LPDES-permitted outfall. Also, when the normal cooling water system fails, wastewater may be generated from the activation of the fire suppression automatic sprinkler ("deluge") backup system for the incinerator. The cooling wastewater effluent is currently being discharged after treatment under the facility's LPDES permit. After delisting, this effluent will continue to be discharged under the facility's LPDES permit. Routine operational and regulatory costs for Lyondell will not change. Lyondell is seeking agency approval to delist, or exclude, the wastewater from the definition of "derived from" hazardous waste to reduce its potential liability resulting from an unplanned, non-recurring cooling system release (spill or leak) or catastrophic event (fire).

The delisting program is regulated by LAC 33:V.105, which includes a formal rulemaking process. Applicants who wish to remove a waste from the list of hazardous wastes must submit a petition and satisfy all requirements of LAC 33:V.105. The department has reviewed Lyondell's petition and found that it satisfies the delisting requirements in LAC 33:V.105.M. The department used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment. The department's proposed action to grant the petition is based on an evaluation of waste-specific information provided by the petitioner. Based on the information submitted by Lyondell, the results of the analytical data, and the results of the DRAS, the department has determined that the nature of this material does not warrant retaining the material as a hazardous waste.

Also included in this rule is a reorganization of Table 1 in LAC 33:V.4999.Appendix E, such that the entries are listed in alphabetical order by facility name. Another clarification made is that facilities granted one-time exclusions, as opposed to conditional exclusions, are moved from Table 1 to Table 2. The basis and rationale for this rule are to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed rule meets an

exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on June 24, 2008, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW099P. Such comments must be received no later than July 1, 2008, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW099P. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**  
**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 49. Lists of Hazardous Wastes**

**§4999. Appendices—Appendix A, B, C, D, and E**

Appendix A. – D. ...

**Appendix E. Wastes Excluded under LAC 33:V.105.M**

A. Each facility granted a conditional exclusion must comply with the specific conditions for the waste exclusion as listed in Table 1 of this Appendix. Each facility granted a one-time exclusion is listed in Table 2 of this Appendix. Each waste exclusion listed in Table 1 shall begin with a waste description and include details for the following conditions:

A.1. - B.3.b. ...

<b>Table 1 - Wastes Excluded</b>
<b>BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA</b>
* * *
[see prior text]

<b>Table 1 - Wastes Excluded</b>
<b>DuPont Dow Elastomers LLC, LaPlace, LA</b>
* * *
[see prior text]

<b>Table 1 – Wastes Excluded</b>
<b><u>Lyondell Chemical Company, Lake Charles, LA</u></b>
<u>Incinerator direct contact cooling wastewater and fire suppression automatic sprinkler ("deluge") system wastewater are generated at a maximum annual generation rate of 800,000 cubic yards (162 million gallons) per year. Lyondell's wastestream includes the United States Environmental Protection Agency (USEPA) hazardous waste codes D001, D019, D021, D030, F002, F003, K027, K112-114, U037, U221, and U223. The constituents of concern for these waste codes are listed in LAC 33:V.4901. This exclusion applies only to incinerator direct contact cooling wastewater and fire suppression automatic sprinkler ("deluge") system wastewater at the Lake Charles, LA facility. The cooling wastewater effluent is currently being discharged after treatment under the facility's LPDES permit. After delisting, this effluent will continue to be discharged under the facility's LPDES permit.</u>
(1). <u>Testing</u> <u>Sample collection and analyses, including quality control (QC) procedures, must be performed according to methods described in <i>Test Methods for Evaluating Solid Waste, Physical/Chemical</i></u>

Methods, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.

(1)(A). Inorganic Testing

During the first 12 consecutive months of this exclusion, Lyondell must collect and analyze one monthly grab water sample from the fire water pond and one monthly grab water sample from the incinerator blowdown stream. These two monthly samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the source water. Lyondell must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), for arsenic, barium, chromium, lead, nickel, vanadium, and zinc, including quality control information. If the department and Lyondell concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), Lyondell may replace the testing required in condition (1)(A) with the testing required in condition (1)(B).

(1)(B). Subsequent Inorganic Testing

After concurrence by the department, Lyondell may substitute the following testing conditions for those in condition (1)(A). Lyondell must continue to analyze quarterly grab water samples from the fire water pond and the incinerator blowdown stream. Lyondell must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), for arsenic, barium, chromium, lead, nickel, vanadium, and zinc, including quality control information. Grab water samples from the fire water pond and the incinerator blowdown stream must be taken during the first month of each quarterly period. These quarterly samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the source water. If delisting levels for any constituents listed in condition (3)(A) are exceeded in any quarterly sample, Lyondell must re-institute testing as required in condition (1)(A).

(1)(C). Organic Testing

During the first 12 consecutive months of this exclusion, Lyondell must collect and analyze one monthly grab water sample from the fire water pond and one monthly grab water sample from the incinerator blowdown stream. These two monthly samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the source water. Lyondell must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), for 2,4-dinitrotoluene, bromoform, chloroform, and hexachlorobenzene, including quality control information. If the department and Lyondell concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), Lyondell may replace the testing required in condition (1)(C) with the testing required in condition (1)(D).

(1)(D). Subsequent Organic Testing

After concurrence by the department, Lyondell may substitute the following testing conditions for those in condition (1)(C). Lyondell must continue to analyze quarterly grab water samples from the fire water pond and the incinerator blowdown stream. Lyondell must report to the department the unit operating conditions and analytical data (reported in milligrams per liter), for 2,4-dinitrotoluene, bromoform, chloroform, and hexachlorobenzene, including quality control information. Grab water samples from the fire water pond and the incinerator blowdown stream must be taken during the first month of each quarterly period. These quarterly samples must be

analyzed for the constituents listed in condition (3)(B) prior to disposal of the source water. If delisting levels for any constituents listed in condition (3)(B) are exceeded in any quarterly sample, Lyondell must re-institute testing as required in condition (1)(C).

(2). Waste Holding and Handling

Lyondell must treat water in the fire water pond and the incinerator blowdown stream as hazardous wastes until the verification testing is completed, as specified in conditions (1)(A) - (1)(D), and the wastewater has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples from the fire water pond and the incinerator blowdown stream are below all of the applicable levels set forth in condition (3), then the incinerator direct contact cooling wastewater and the fire suppression automatic sprinkler ("deluge") system wastewater thereby become nonhazardous. If hazardous constituent levels in any monthly grab sample equal or exceed any of the delisting levels set in condition (3), the wastewater must be managed and disposed of in accordance with Subtitle C of RCRA until the wastewater meets the delisting levels. Lyondell must repeat the analyses for the constituents listed in conditions (3)(A) and (3)(B) prior to disposal.

(3). Delisting Levels

Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. All concentrations in the wastewater must be less than the following levels (all units are milligrams per liter).

(3)(A). Inorganic Constituents (all units are milligrams per liter)

arsenic—0.5; barium—50.0; chromium—1.0; lead—1.0; nickel—10.0; vanadium—15; and zinc—200.

(3)(B). Organic Constituents (all units are milligrams per liter)

2,4-dinitrofluorene—0.02; bromoform—10.0, chloroform—0.14; hexachlorobenzene—0.13.

(4). Changes in Operating Conditions

If Lyondell significantly changes the operating conditions specified in the petition, Lyondell must notify the department in writing. Following receipt of written approval by the department, Lyondell must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four consecutive months. Lyondell must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Lyondell may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Lyondell must fulfill all other requirements in condition (1).

**Table 1 - Wastes Excluded**

**Marathon Oil Co., Garyville, LA**

\* \* \*

[see prior text]

**Table 1 - Wastes Excluded**

**Motiva Enterprises LLC, Norco, LA**

\* \* \*

[see prior text]

**Table 1 - Wastes Excluded****Syngenta Crop Protection, Inc., St. Gabriel, LA**

\* \* \*

[see prior text]

**Table 24 – One-Time Wastes Excluded****Murphy Exploration and Production Company, Amelia, LA**

Hazardous waste incinerator ash was generated by the combustion of hazardous wastes and nonhazardous wastes in a rotary kiln incinerator at Marine Shale Processors in Amelia, Louisiana. In 1986 and 1987, this ash was used as fill material for the Rim Tide barge slip area at Murphy Exploration and Production Company (Murphy) in Amelia, Louisiana. For the purpose of this exclusion, ash used as fill material by Murphy includes all hazardous waste codes listed in LAC 33:V.4901. This is a one-time exclusion for a maximum volume of 6,200 cubic yards of ash subsequent to its excavation from the Rim Tide barge slip area at Murphy for the purpose of transportation and disposal in a Subtitle D landfill after June 20, 2007.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:\*\*.

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULESLOG #: HW099PPerson  
Preparing  
Statement:Emad NofalDept.: Environmental Quality

Phone:

(225) 219-3423Office: Environmental Assessment

Return

Address:

P. O. Box 4314

Rule

Title: Lyondell Delisting Petition  
(LAC 33:V.4999, Appendix E)Baton Rouge, LA 70821-4314

Date Rule

Takes Effect: Upon promulgation

## SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

## I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No costs to state governmental units or local governmental units are expected due to implementation of this proposed change. Similarly, no savings to state or local governmental units is anticipated.

## II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated.

## III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Only Lyondell will be directly affected, and then only if a system failure or catastrophic event generates wastewater that otherwise would be classified as "derived from" hazardous waste. The proposed action will provide Lyondell a reduction in workload, paperwork, recordkeeping, and discharge/disposal costs associated with such an event, including potential liability. A past occurrence resulted in additional costs of \$501,139 for Lyondell.

## IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and/or employment is anticipated.

\_\_\_\_\_  
Signature of Agency Head or Designee\_\_\_\_\_  
Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel  
Typed Name and Title of Agency Head or Designee

\_\_\_\_\_  
Date of Signature\_\_\_\_\_  
Date of Signature

# FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Lyondell Chemical Company is petitioning to exclude from the hazardous waste regulations (delist) incinerator direct contact cooling wastewater and fire suppression automatic sprinkler ("deluge") system wastewater. The delisting program is regulated by LAC 33:V.105, which includes a formal rulemaking process. Applicants who wish to remove a waste from the list of hazardous wastes must submit a petition and satisfy all requirements of LAC 33:V.105. The department has reviewed Lyondell's petition and found that it satisfies the delisting requirements in LAC 33:V.105.M. The department used the delisting risk assessment software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment. The department's proposed action to grant Lyondell's petition is based on an evaluation of waste-specific information provided by the petitioner. Based on the information submitted by Lyondell, the results of the analytical data, and the results of the DRAS, the department has determined that the nature of this material does not warrant retaining the material as a hazardous waste. The basis and rationale for this proposed rule are to grant the delisting petition based on an evaluation of waste-specific information submitted by Lyondell Chemical Company.

Also included in this rule is a reorganization of Table 1 in Appendix E, such that the entries are listed in alphabetical order by facility name. Another clarification in Appendix E is the creation of Table 2, which includes facilities granted one-time exclusions, as opposed to Table 1, which includes facilities granted conditional exclusions.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Lyondell Chemical Company's incinerator design uses direct contact cooling water to quench and scrub hot combustion gases resulting from the destruction of listed hazardous wastes. This primary cooling wastewater is blown down and pH-adjusted before being discharged at an LPDES-permitted outfall. Also, when the normal cooling water system fails, wastewater may be generated from the activation of the fire suppression automatic sprinkler ("deluge") backup system for the incinerator. The cooling wastewater effluent is currently being discharged after treatment under the facility's LPDES permit. After delisting, this effluent will continue to be discharged under the facility's LPDES permit. Routine operational and regulatory costs for Lyondell will not change. Lyondell is seeking agency approval to delist, or exclude, the wastewater from the definition of "derived from" hazardous waste to reduce its potential liability resulting from an unplanned, non-recurring cooling system release (spill or leak) or catastrophic failure (fire).

- C. Compliance with Act 11 of the 1986 First Extraordinary Session  
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule change will not result in any increase in the expenditure of funds.



(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) \_\_\_\_ Yes. If yes, attach documentation.

(b) \_\_\_\_ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

## FISCAL AND ECONOMIC IMPACT STATEMENT

## WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY07-08	FY08-09	FY09-10
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT	-0-	-0-	-0-
TOTAL			
MAJOR REPAIR & CONSTR			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There will be no increase or reduction in costs or savings associated with the proposed rule change.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The agency has sufficient funds to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact on local governmental units resulting from the proposed rule change.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

No sources of funding will be required of the local governmental unit.

## FISCAL AND ECONOMIC IMPACT STATEMENT

## WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	-0-	-0-	-0-

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There will be no increase or decrease in revenue collections of state and local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Only Lyondell will be directly affected, and then only if a system failure or catastrophic event generates wastewater that otherwise would be classified as "derived from" hazardous waste. The proposed action will provide Lyondell a reduction in workload, paperwork, recordkeeping, and discharge/disposal costs associated with such an event, including potential liability. A past occurrence resulted in additional costs of \$501,139 for Lyondell.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on receipts and/or income to the directly affected persons or nongovernmental groups is expected under normal operations.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition and/or employment.